

**MINUTES OF MEETING
FLOW WAY
COMMUNITY DEVELOPMENT DISTRICT**

The Regular Meeting of the Board of Directors of the Flow Way Community Development District was held on Thursday, June 16, 2022, at 1:00 P.M. at the Esplanade Golf and Country Club, 8910 Torre Vista Lane, Naples, FL 34119.

Present and constituting a quorum:

Zack Stamp	Chairperson
Ron Miller	Vice Chairperson
Bart Bhatla	Assistant Secretary
Tom Kleck	Assistant Secretary

Absent:

Martinn Winters	Assistant Secretary
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Also present were:

James P. Ward	District Manager
James Messick	District Engineer
Jessica Tolin	District Counsel

Audience:

Dave Boguslawski

All resident's names were not included with the minutes. If a resident did not identify themselves or the audio file did not pick up the name, the name was not recorded in these minutes.

PORTIONS OF THIS MEETING WERE TRANSCRIBED VERBATIM. ALL VERBATIM PORTIONS WERE TRANSCRIBED IN *ITALICS*.

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Chairperson Zack Stamp called the meeting to order at approximately 1:00 p.m. Roll call was conducted, and all Members of the Board were present, with the exception of Supervisor Winters, constituting a quorum.

SECOND ORDER OF BUSINESS

Public Comments

Public Comments for non-agenda items (Limited to three (3) minutes). Individuals are permitted to speak on items on the agenda during that item and will be announced by the Chairperson.

Chairperson Stamp reviewed public comment protocols.

THIRD ORDER OF BUSINESS

Consideration of Minutes

May 19, 2022 – Regular Meeting

Chairperson Stamp asked if there were any corrections or deletions.

Mr. Ron Miller: I have no corrections or deletions; however, I had difficulty understanding what Mr. Jimmy Messick was saying regarding Lee County's desire to pump stormwater into our preserves and so when I read the Minutes in preparation for this Meeting, that was really the first awareness I had of that whole discussion. I'm just hoping somebody can help me understand what that meant.

Chairperson Stamp: That's going to be on our Agenda. We are going to get a report from the lawyers and from Jimmy on what they know. At the last meeting we were just finding out about it too, so we will get to that.

Mr. Miller: Okay.

On MOTION made by Mr. Tom Kleck, seconded by Mr. Bart Bhatla, and with all in favor, the Minutes for the May 19, 2022 Regular Meeting were approved.

FOURTH ORDER OF BUSINESS

Staff Items

I. District Attorney – Woods, Weidenmiller, Michetti, & Rudnick

- a) **Status Report on City of Bonita Springs application to SFWMD to discharge floodwater into Collier County (including the Preserve)**
- b) **Status Report on Litigation**
- c) **Update on non-binding new Arbitration Hearing scheduled for May 31, 2022**
- d) **Former Directors' Motion for Summary Judgement scheduled for Hearing on June 21, 2022**
- e) **Defendants' Motion for Summary Judgment scheduled for Hearing on July 6, 2022**
- f) **Anticipated trial period between August 22, 2022, and September 16, 2022**
- g) **Update on discussions with HOA as to potential new litigation**
- h) **Request to call Executive Attorney/client shade session; discussion of lawsuit, File Number: 20-CA-4147**

Chairperson Stamp: Jessica, I think we can probably do B, C, D, E, and F and hold those for the shade session unless there is something you think we want to talk about particularly on those to give us a general update. The shade session isn't today obviously, but we will start with the first item which is the City of Bonita Springs application.

Ms. Jessica Tolin: From what we've learned, and we've spoken with the County briefly on the issue, as well as we've been working with Jimmy, and it essentially right now is just a temporary or

emergency permit, not what started as a (indecipherable). That application was (indecipherable). We are a little bit on a wait and watch kind of scenario to see what it is they are actually going to be looking to do. They, meaning the City of Bonita Springs. There is some language in the conservation easement that Jimmy and my office are looking at to see if that maybe gives us something to contest it if we need to, but we do plan to stay in contact with the County and try to get provided updates on any plan of action they may be taking and then seeing what transpires at future meetings and what the discussions are between the County and the City on this.

Chairperson Stamp: What kind of actions – I mean the permit's been issued. The master permit, or whatever the plan –

Ms. Tolin: I may be going a little out of order, but maybe Jimmy could touch on this.

Mr. Bhatla: Who are you talking to? Engineering staff or somebody else?

Ms. Tolin: We spoke to the County attorney. Jimmy talked to the engineers.

Mr. Jimmy Messick: I included this as one of my items in my list. I'm going to jump to my Item number 3 which is the City of Bonita Springs Floodwater Diversion Plan. It didn't make it to today's Agenda. We printed out copies, so you have a copy of what I'm about to read, but I know you haven't had a chance to read it before the meeting. On May 26, the CDD was made aware of Bonita Springs Floodwater Diversion Plan that was previously discussed at the Collier County Board of County Commissioners meeting held on April 26, 2022. At this meeting District 2 Commissioner Andy Solis presented to the Board of Commissioners the City of Bonita Springs Plan to divert floodwater from Bonita Springs Blvd, and adjacent residential neighborhoods, through Logan Blvd canal system and into Collier County's Caloosahatchee Canal via our CDD's external preserves and canal. Upon further investigation and discussions with South Florida Water Management District's principal engineer of the Big Cypress Bradley Jackson, two plans have been prepared by the City of Bonita Springs. The first utilizes existing emergency pumps and the second plan is to construct permanent facilities that would pump floodwater and specific tailwaters at specific tailwater thresholds. Mr. Jackson has since confirmed the application for the permanent facilities project have been withdrawn and is thought to be no longer pursued by the City of Bonita Springs. However, the emergency pump option is still being considered by the City as an emergency floodwater operations plan which was prepared collaboratively between South Florida and the City of Bonita Springs and could be used for an emergency permit. That hasn't been submitted yet. It will be submitted if there is a state of emergency, and the plan is in place to submit for an emergency plan at that time. Actually, who I spoke with, Mr. Jackson, would be responsible for approving that plan. He has the ability to approve it and he would consider downstream tailwater conditions, maybe whether or not Collier County was in a state of emergency, or he would look at elevations in the Caloosahatchee before he would approve that emergency plan by the City of Bonita Springs. I've made a request to the City of Bonita Springs for the Bonita Springs Floodwater Operations Plan, for both improvements, a list of questions for them, and I'm waiting to hear back from Mr. Jackson. He was busy last week with preparations for the tropical storm that was approaching. This week I reached out to him again and I found out he's on vacation for a week. Next week I will followup with him again, and hopefully get my hands on the operation plan for the City of Bonita Springs.

Mr. Bhatla: Is this a one time emergency or is this an emergency plan for every time an event occurs?

Mr. Messick: They can use the operation plan they collaboratively came up with together every time there is a state of emergency. They would have to place the emergency pumps every time; the pumps are not installed.

Chairperson Stamp: What kind of notice would we get, the County get, or –

Mr. Messick: I don't know. I don't think it being an emergency permit there isn't a whole lot of approval process there.

Ms. Tolin: Right, the specific criteria that has to be checked in order for it to be issued, being an emergency permit, there have been some organizations that have sent in planners already to the South Florida Water Management District, specifically the Conservancy and the Audubon Society has. We've sent in a public records request also to South Florida Water Management District and the City of Bonita Springs with respect to their documents, so we are still waiting on these documents. With that we should at least see one of the interested parties that sent in a request, but to the extent that there is notice, I'm not sure there is going to be some formal heads up whenever they do that.

Chairperson Stamp: What's the gist of the letters from the Audubon and Conservancy? We want to be kept informed or we don't like it?

Ms. Tolin: I have not gone through those letters yet. I just know that they sent them in.

Chairperson Stamp: Get us copies and give them to Jim –

Mr. Bhatla: I'd be interested to know if an impact analysis has been done.

Ms. Tolin: Again, we are waiting to see what transpires with this and we need to get the documents initially on what the emergency permit and temporary plan is in the meantime.

Mr. Bhatla: I guess we need to see the plan and then (indecipherable).

Ms. Tolin: (indecipherable).

Mr. Miller: From a layman's perspective the only time it would seem Bonita Springs would want to exercise their emergency pumping privilege would be when there was a true emergency which would apply to everybody. Maybe you get a hurricane with two feet of rain where Esplanade may already be in jeopardy of flooding and then Bonita Springs would cinch that and flood us out. So, why would we agree to allow Bonita Springs to pump their floodwaters into our floodwaters.

Mr. Messick: I can speak to that. And I appreciate your point of view. When I spoke to the District, I had the same question, and he was specific to the point that the tailwater conditions in the Caloosahatchee Canal would have to recede before he would approve their permit for emergency pumping. The point of the emergency pumping is that our basin drains well through the canal. Their basin just north of the county line doesn't drain as fast and they have standing

water for longer amounts of time. This emergency permit will pump the flooding waters after the floods have receded in Collier County, but who keeps track of that and who is really operating the pumps. We're not sure yet.

Chairperson Stamp: I don't think anyone is disagreeing with you about what the problems and concerns are, Ron. The question is how do we block it, monitor it, modify it, etc.?

Mr. Bhatla: We can't comment on anything if we don't have a plan in front of us. Right now, it's a concept.

Mr. Ward: In layman's terms the City of Bonita Springs has not sufficiently provided drainage in the area that floods, so they do that by draining the emergency condition into Collier County, and potentially Esplanade.

Mr. Miller: Why doesn't Bonita Springs fix their own problem?

Mr. Ward: Exactly. This is a money thing.

Chairperson Stamp: This is going to be on the Agenda for the foreseeable future as we wade through this. Hopefully, no storms come to trigger. Okay, back to the legal.

Ms. Tolin: On the litigation, to address a couple items, I do want to talk about the summary judgment hearings because there has been a quick change on that as of this morning. Because there has been an arbitration award issued, we get 20 days from issue of the award to determine whether to accept or to file for motion for trial de novo. We can discuss that in a shade session which we will get to, but to allow for that time period we are going to move that summary judgment hearing next week. What we are trying to do, if the Court will allow it, is have both motions heard on July 6 if necessary. Once we have that confirmed you will be provided the new date. Then the trial period currently is still anticipated to be between August 22 and September 16. We won't know specifically where we are set on that until it gets closer to the timeframe. In terms of a shade session, you are 20 days from the date of issuance which we need to have a decision on what the Board would like to do, so that's going to put the deadline to do that June 30. We will need to get a shade session scheduled prior to that.

Mr. Bhatla: So, the clock has already started.

Ms. Tolin: Correct. The issuance date was June 10.

Chairperson Stamp: The 30th is when we have to notify the court of our intentions. We can have the shade session and you can put something in the mail?

Ms. Tolin: That's the last day by which we could do something. There are options we can discuss in the shade session.

Mr. Miller: I have read the outcome of that. Are we compelled to take any action in this 20 day period? What happens if we fail to take any action?

Ms. Tolin: Well, you have 20 days, if you didn't want to accept what the decision was then you have 20 days by which you can file a motion for trial de novo with the court. If you don't file a motion and the other side doesn't file a motion, everyone is deemed to have accepted the decision. It is a strict deadline. It is not one that gets extended. Either party can file what's called a motion for trial de novo; if one party files it, then depending on what's filed, how it's filed, the case would still proceed. There are, again, options we can discuss as to what that may look like, but it would proceed onward from there. If both parties take no action and file no motions, then the decision is accepted by both parties, and it becomes the decision.

Chairperson Stamp: You can't participate in a shade session unless you are physically present. We would like to try to have all five Board Members present. It's not open to the public and does not have to be at 1:00 p.m. like these and on any day. What works for people?

Discussion ensued regarding what would be a good date and time for a shade session. No decision was made.

Chairperson Stamp: While we are waiting do you want to talk about the 558 claims or anything else?

Ms. Tolin: We really don't have any new updates on the 558 claims. We still want to work with the HOA on it.

Chairperson Stamp: Do you know how close they are to doing anything?

Ms. Tolin: I do not.

Discussion continued regarding what would be a good date and time for a shade session. Internet connection was lost, and the meeting audio was lost for approximately 3 minutes at this point. Audio returned and it was decided to hold the shade session June 22, 2022 at 10:00 a.m.

Mr. Ward: When we close today, we are just going to continue the meeting, recess.

II. District Engineer – Calvin, Giordano & Associates

a) Engineer's Report

- 1. SFWMD Water Use Permit (Consumptive Use Permit)**
- 2. City of Bonita Springs application to SFWMD to discharge floodwater into Collier County (including the Preserve)**

Chairperson Stamp: Jimmy, you are done?

Mr. Messick: Yes.

III. District Manager – JPWard & Associates, LLC

- a. Fiscal Year 2023 Budget Public Hearing – July 21, 2022 (4:00 P.M.)**
- b. Financial Statements for period ending May 31, 2022 (unaudited)**
- c. Update on Discussions with HOA regarding ultimate ownership/maintenance responsibilities**

Mr. Ward: A reminder, your public hearing is scheduled for July 21, the time is 4:00 p.m. We are going to be in the larger dining room area. Try to get there around 3:30 p.m. the latest to be available for the meeting.

Chairperson Stamp: We are working on a slide show presentation which will be part of the budget public hearing. It will in effect be three meetings that will all run consecutively/concurrently. The one will be the budget, then after we pass the budget we will set the rate, and then we will do our regular agenda. We are working on a slide show. Jimmy is going to have a presentation inside of that talking about the Capital Program. It will be a fairly big production. Jim, I want to ask about what we are doing with the HOA regarding ownership maintenance responsibilities.

Mr. Ward: Sure. Let me go back and add I sent you all an email yesterday. The mailed notice to all property owners went out yesterday afternoon so they will start to get them in the mail tomorrow. You will see that happening. A copy of the mailed notice is on the District's website, along with the budget, along with all of the capital programs associated with the budget. With respect to the HOA, Jimmy is working on an analysis of all of the assets that are being maintained by the District right now. Where all the permits are located, who has the permits, making sure we have all of the easements, etc. Jessica's firm and Jimmy are trying to get us all the easement information. Hopefully, that will be ready for us to take a look at just after your public hearing and we will be able to meet with the HOA at that point.

Mr. Bhatla: I think an important item is that in the budget we mention that we have taken responsibility for several items previously being handled by HOA. I think people will be interested in whether there would be a reduction in the HOA. At least we need to address that somehow or the other.

Mr. Ward: I think the problem is that the change in the budget was from the developer controlled budget to a resident controlled HOA Board. That budget obviously changed substantially at the same time ours is changing. I don't want to say that the HOA should go down or go up. They are different animals. They are just two different beasts. We took over from the HOA, but the HOA also changed at the same time to a resident controlled board and what they are maintaining and how they are doing is substantively different than when it was done by the developer controlled board. You can just see that in what we both need to maintain on a going forward basis. I think that's the fair way to say that. It's not reflective of whether the HOA increases, decreases, or keeps at the same. It's just a different beast at this point.

Chairperson Stamp: I think we can say Taylor Morrison just didn't do some of the things they were supposed to do or didn't do them very well, and they probably did subsidize to a certain extent some of the things that we have taken over and may or may not continue to do in the same manner they did. It would probably be a fair statement that had we not taken them over the HOA assessment might be higher than it is because somebody has to do these functions, but I don't think we can say we'd lower the HOA assessment by doing it. Once we have a plan worked out with the HOA where we can sit down and trade stuff or assign some of these things – like we are responsible for the Christmas decorations, but maybe that should be an HOA function. But because of the way Taylor Morrison set it up and did, it is a CDD function. There are a lot of things like that.

Mr. Bhatla: We can explain that we have a change as opposed to it's a give and take.

Mr. Ward: I think our letter did a good job at doing that. The power point I am working on with everybody basically says exactly the same thing.

FIFTH ORDER OF BUSINESS

Audience Comments

Audience Comments: Public comment period is for items NOT listed on the Agenda, comments are limited to three (3) minutes per person, assignment of speaking time is not permitted, however the Presiding Officer may extend or reduce the time for the public comment period consistent with Section 286.0114, Florida Statutes

Chairperson Stamp: Dave did you have anything you wanted to add?

Mr. Dave Boguslawski: One of the things we've both learned, the CDD and HOA, is Taylor Morrison really didn't do any preventative maintenance, and so anything we are taking over needs to have some assessment of preventative maintenance, not just fixing things when they break. We are at the stage where we are doing catchup in that regard. I like where you are going though and any help you would like or need in any communications around that, just let us know.

Chairperson Stamp: Dave, if you want to address the 558, the floor is yours.

Mr. Boguslawski: So, we filed the 558s prior to the last mediation session. Taylor Morrison, after that session, asked for a 14 day extension to respond. I think they have 60 days to respond to the letters. Peter granted the extension and they immediately followed with they wanted another 60 days beyond that. So, the extension to our 558 claims letters are now out maybe three more months from now. Peter had granted that extension too. Their request on need for extension dealt more with the golf course more than anything else. They want to come onsite and perform more of their own inspections. That's the reason he felt it was necessary to grant that. That's what's going on with our 558s.

Chairperson Stamp: Martinn and I and Jim have received preservation letters to preserve any correspondence, emails, materials we have from our involvement with the Esplanade transition fund. We will be talking to counsel for both the HOA and the CDD about how to proceed with that. That was nothing more than a letter saying don't destroy anything and preserve any documents you've got.

Mr. Bhatla: I was interested about the July Board Meeting. Is that going to be on the 21st after or prior to the presentation?

Mr. Ward: The presentation is within the context of the whole budget. It is basically three meetings in one.

Chairperson Stamp: It is essentially going to be one meeting divided into three parts.

SIXTH ORDER OF BUSINESS

Announcement of Next Meeting

Announcement of Next Meeting – Public Hearing on July 21, 2022

SEVENTH ORDER OF BUSINESS

Adjournment/Recess

The meeting was recessed until June 22, 2022 at 10:00 a.m. at 8910 Torre Vista Lane, Naples, FL 34119.

Flow Way Community Development District



James P. Ward, Secretary



Zack Stamp, Chairperson